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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,609	07/02/2007	Xavier Briand	20010.0008USWO	5232
52835 7590 06/21/2010 HAMRE, SCHUMANN, MUELLER & LARSON, P.C. P.O. BOX 2902 MINNEAPOLIS, MN 55402-0902				
EXAMINER				
IQBAL, SYED TAHIA				
ART UNIT		PAPER NUMBER		
1793				
MAIL DATE		DELIVERY MODE		
06/21/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/594,609

Applicant(s)

BRIAND ET AL.

Examiner

SYED IQBAL

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 6-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Status of Claims

Claims 6-22 were previously rejected and are currently pending.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6-10 are rejected under 35 U.S.C. 103(a) as obvious over Iqbal et al. "Studies on aqueous extracts of three green algae as an elicitor of plant defense mechanism" Pak. J. Bot, as discussed previously.

Claims 11-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iqbal et al. "Studies on aqueous extracts of three green algae as an elicitor of plant defense mechanism" Pak. J. Bot.

Applicant's arguments filed 05/07/2010 have been fully considered but they are not persuasive. The arguments presented by applicant were previously addressed in the advisory action and are incorporated herein. Applicant argues that the Iqbal reference does not indicate that the presence of iduronic acid in the polysaccharide extracts of *Ulva lactulus* and therefore the polysaccharide extracts of Iqbal do not correspond to ulvans of claim 6. However, the iduronic acid is not a required monomer component in all ulvans and more specifically it is not required by claim 6. Applicant further argues that the reference does not teach or suggest administering an amount effective for eliciting nitrogen absorption and protein synthesis in plants and the reference only teaches studies showing increased disease resistance in plant. However, the reference teaches

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high elicitor activity and sugar content of the *ulva lactuca*. This would motivate one skilled in the art to use it in an amount which would result in this function. Furthermore since the reference teaches elicitor activity leading to disease resistance, the amount administered to exhibit such a showing must have been effective elicitor amount. Applicant argues that the product function of claim 9 is not taught. However, the product function cannot be given patentable weight when the composition itself is claimed.

Furthermore, the examiner notes that the reference does not specifically teach the amount of materials required in claim 10-12. Such a property is a result effective variable which can be determined without undue experimentation.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SYED IQBAL whose telephone number is (571)270-5857. The examiner can normally be reached on Monday to Thursday 7:30am EST to 6:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley S. Silverman can be reached on 5712721358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Wayne Langel/
Primary Examiner, Art Unit 1793

/S. I./
Examiner, Art Unit 1793